

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

)
TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a TRUCK SERVICE,)
Plaintiff)
)
)
vs.)
)
CATERPILLAR INC.)
Defendant)

CIVIL ACTION NO. 04-11836-RCL

**MOTION OF THE PLAINTIFF, TRANS-SPEC TRUCK SERVICE, INC., TO STAY
ACTION ON CATERPILLAR INC.'S APPLICATION FOR AN AWARD OF COSTS**

The plaintiff, Trans-Spec Truck Service, Inc. ("Trans-Spec"), hereby moves to stay action on *Caterpillar Inc.'s Application for an Award of Costs* ("Application"). As grounds for this motion, Trans-Spec states as follows:

1. Judgment entered in the above-captioned case on February 14, 2007.
2. Trans-Spec intends to file timely a Notice of Appeal.
3. Fed. R. Civ. P. 54(d) grants this Court discretion in setting a schedule for requesting fees, including the ability to permit claims for fees to be billed after resolution of an appeal. *DaimlerChrysler Corporation v. Commissioner, Massachusetts Department of Environmental Protection*, 2001 U.S. Dist. LEXIS 18325, *13 (D. Mass. 2001); see also *Davet v. Maccarone*, 973 F.2d 22, 26 (1st Cir. 1992).
4. Caterpillar Inc. ("Caterpillar") is not prejudiced by having its claim for fees in the amount of \$17,062.58 deferred until after resolution of the appeal.
5. Trans-Spec reserves its right to challenge the amount, reasonability, and propriety of the costs Caterpillar seeks. Trans-Spec also reserves its right to seek adversary submissions in accord with Fed. R. Civ. P. 43(e). See Fed. R. Civ. P. 54(d)(2)(C).

WHEREFORE, Trans-Spec respectfully requests that this Court stay action on Caterpillar's Application pending resolution of the appeal in this matter.

Respectfully submitted,
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE
By its Attorneys,

/s/ Christian G. Samito
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Christian G. Samito, Esq., BBO#639825
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Date: February 23, 2007

REQUEST FOR ORAL ARGUMENT

If the Court deems it necessary, Trans-Spec requests oral argument on this Motion.

LOCAL RULE 7.1 CERTIFICATE OF CONSULTATION

Counsel for Trans-Spec hereby certifies that he has conferred with Caterpillar's counsel and attempted in good faith to resolve or narrow the issues presented in this motion.

/s/ Christian G. Samito
Christian G. Samito, Esq.
Counsel for Trans-Spec Truck Service, Inc.

CERTIFICATE OF SERVICE

I, Christian G. Samito, hereby certify that on this 23rd day of February, 2007, I served a copy of the foregoing by mail and by causing a copy to be transmitted electronically to:

John A. K. Grunert, Esq.
Campbell Campbell Edwards & Conroy
One Constitution Plaza, 3rd Floor
Boston, MA 02129

/s/ Christian G. Samito
Christian G. Samito, Esq.

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